IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2840 OF 2005
IN
APPEAL NO.22 OF 2006
IN
COMPANY APPLICATION NO.376 OF 2000
IN
COMPANY PETITION NO.466 OF 1995

ALONGWITH

APPEAL NO.22 OF 2006
IN
COMPANY APPLICATION NO.376 OF 2000
IN
COMPANY PETITION NO.466 OF 1995

Allahabad Bank Ltd. ..Appellants.

Vs.

M/s.Rossel Finance Ltd. & Ors. ..Respondents.

Mr. Shailesh Shah with Ms. U.M. Srivastav i/b. M/s.Consulta Juris for the Appellants.

Mr.U.S.Patole, Asstt. Official Liquidator present for Respondent No.2.

Mr.M.P.S.Rao i/b.Ms.U.M.Jhaveri for Respondent No.3.

CORAM: DR.S.RADHAKRISHNAN AND
S.J.VAZIFDAR, JJ.
DATED: 5H APRIL, 2006

P.C. :

The above Notice of Motion has been taken out by the Appellants, seeking condonation of delay of 148 days in filing the above Appeal. The delay, in fact, is more.

2. Considering the conduct of the Appellants throughout, we find it difficult to condone the delay adopting an extremely liberal approach. However, as the order we propose passing does not prejudice the rights of any of the parties, we intended disposing of the Appeal on merits.

3. The Appeal is against the order and judgment of the learned Single Judge dated 17.11.2000 in the above Company Application No.376 of 2000, to which, the Appellants were admittedly not a party. The Company Application was taken out by Respondent No.3 for an order seeking the setting aside of an order dated 7.5.1999 appointing the Official Liquidator as provisional liquidator in respect of the first Respondent Company, in so far as it relates to an office premises in a building named Streling Centre Building, Worli, Mumbai (hereinafter referred to as "the said premises"). Respondent No.3 also sought an order directing the official liquidator to remove the seal put on the said premises and to hand over possession thereof to Respondent No.3.

4. The learned Single Judge allowed the Company Application. The learned Judge held that the

transaction entered into between Respondent Nos.1 and 3 dated 24.11.1998 was bona-fide so far as Respondent No.3 was concerned and, that the transaction was not meant to defeat anybody's claim. By the said agreement dated 24.11.1998 Respondent No.3 purchased the said premises for a sum of Rs.2.25 Crores from Respondent No.1.

5. It was contended on behalf of the Appellants that they have a claim against Respondent No.1 in respect whereof the Appellants have adopted proceedings. It was submitted that there was an injunction restraining the Company/Respondent No.1 from alienating the said premises. Even assuming that is so, the injunction was admittedly after the transaction was entered into between Respondent Nos.1 and 3.

6. Mr.Shah, however, contended that if the Appellants succeed in setting aside the transaction, the premises would constitute an asset of the Company and the sale proceeds thereof would enure to the Appellant's credit.

7. Prima-facie, the submission is not well founded. Admittedly, the said premises are not a security in

favour of the Appellants in respect of the dues of the Appellants. The Appellants have therefore no right, title or interest whatsoever in respect of the said premises.

8. We however do not intend making any conclusive observations on the merits of this contention. Admittedly, the Appellants were not a party to the above Company Application in which the impugned order dated 17.11.2000 was passed. The observations therein, therefore, cannot and do not affect the rights, if any, of the Appellants in respect of the said premises. The remedy of the Appellants therefore would be to adopt independent proceedings in respect of any rights that they may claim qua the said premises.

9. In the circumstances, the Appeal is dismissed with the clarification that the impugned order will not affect the rights, if any, of the Appellants to adopt appropriate proceedings in respect of the said premises.

10. The above Appeal and the Notice of Motion are accordingly disposed of.

(DR.S.RADHAKRISHNAN, J.)

(S.J. VAZIFDAR, J.)